IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2493 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAGANBHAI BECHARBHAI PATEL - Petitioner(s)

Versus

KHADI & VILLAGE INDUSTRIES COMMISSION-A BODY CORPORATED & 2 - Respondent(s)

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Appearance :
Mr.Chinmay Gandhi for MR MB GANDHI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.
MR Dhaval D. VYAS for MR DD VYAS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/01/2006

ORAL JUDGMENT

1. The petitioner has filed petition under Article 226 of the Constitution of India praying for direction to the respondents directing them not to terminate the services of the petitioner, not to illegally accept the dead letter of resignation and any such action in contemplation of respondents be quashed and set aside. The petitioner has also prayed for declaration that the petitioner was still in service and the resignation letter dated 11.11.1986 was withdrawn by the petitioner vide his letter dated 24.02.1987.

2. Notice was issued and order of status quo was passed on 31st May, 1987. The petition was admitted and rule was issued by this Court on 30.07.1987 and interim relief granted earlier was ordered to be continued till further order.

3. The petitioner thereafter filed Civil Application No.1209/1987 in Special Civil Application No.2493/1987. The said civil

application was allowed by this Court vide its order dated 16.10.1987 and the Court has directed the respondents to pay to the petitioner salary for the months of June and July 1987 and to regularly pay him his salary for the subsequent period also. The Court has further directed the respondent to make the payment of salary for the months of June, July and August, 1987 to the petitioner within a period of 15 days from the date of receipt of the writ of the Court and thereafter pay the salary regularly.

4. The above order passed by this Court in Civil Application No.1209 of 1987 was challenged by respondent commission before the Division Bench of this Court by way of filing Letters Patent Appeal No.460 of 1987. However, said civil application preferred in L.P.A. and L.P.A. itself were dismissed by this Court on 16.11.1987.

5. In the above view of the matter, the petitioner must have been getting his salary regularly from June, 1987 onwards till 1991, the day on which he

reached to the age of superannuation.

6. Heard Mr.Chinmay Gandhi, learned advocate appearing on behalf of the petitioner and Mr.Dhaval Vyas learned advocate appearing for the respondent. After the order passed by the learned Single Judge of this Court in Civil Application No.1209 of 1987 which has been confirmed by the Division Bench by virtue of disposal of the Letters Patent Appeal, nothing survives in this matter. It is true that the petitioner has tendered his resignation on 11.11.1987 stating therein that the said resignation would be effective from April, 1987. However, before this date, the petitioner vide his letter dated 14.02.1987 has already withdrawn the said resignation.

7. The legal position is well settled. As per recent decision of the Hon'ble Supreme Court in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd. (2005) 8 SCC 314 before resignation has come into effect, it is open for the concerned person to withdraw the said resignation unless he has taken

any benefit out of his resignation pursuant to the said resignation letter. It is admitted position in the present case that the resignation letter given on 11.11.1987 did not come into effect and before that, it was already withdrawn. Hence, there is no infirmity in withdrawing the said resignation.

8. The only point which remains for consideration in the present petition, is in respect of some inquiry contemplated against the petitioner and therefore, the petitioner has tendered his resignation. In the affidavit-in-reply filed on behalf of the respondent it is stated that certain irregularities have been committed by the petitioner in the affairs of the Mandal. On detailed investigation, it was found that Khadi certificate issued to the Jilla Gram Seva Mandal, was cancelled as serious irregularities were found to have been committed and an amount of Rs.9,00,000/- was found recoverable from it. This fact was known to the petitioner since the said institution was under his jurisdiction. The old institution would not be entitled to any financial

assistance from the respondent commission. This fact has not been brought to the notice of the respondent commission and the said fact has been suppressed by him. Khadi certificate which has been issued to the new institution has been cancelled by order dated September 29th, 1986 and the petitioner was apprehending that he would be held responsible for the same and serious action would be taken against him. He had therefore, addressed a letter of voluntary retirement to the respondent commission and thereafter he addressed another letter requesting withdrawal of earlier resignation sent by him. Thereafter, he approached this court and order of status quo was passed by the court and hence no action was taken against the respondent.

9. Mr.Dhaval Vyas, learned advocate appearing on behalf of the respondent has therefore submitted that any such action which the respondent commission was inclined to take against the petitioner, would not be taken by virtue of an order of status quo. The respondent commission is therefore, well within its right to take such

action against the petitioner.

10. Mr.Chinmay Gandhi, learned advocate appearing on behalf of the petitioner in rejoinder has submitted that before making at any such observation, it is to be noted that the petitioner has retired 15 years back and hence it is not just and proper to permit the respondent to initiate any action against the petitioner.

11. After having heard learned advocates for the respective parties, after perusing affidavit in reply, the pleadings of the parties as they contained in the petition, affidavit-in-reply and affidavit-in-rejoinder and after having gone through the earlier order passed by the court in Civil Application No.1209 of 1997 and after having taken into consideration the order of dismissal of L.P.A. passed by this Court, the Court is of the view that the petitioner had already withdrawn his resignation before it has come into effect and by virtue of such withdrawal the petitioner was entitled to get all benefits from the date of

appointment till he has reached the age of superannuation. Since pursuant to the order passed by the learned Single Judge, the petitioner was entitled to receive salary, it is believed that the petitioner must have been got all his benefits till the age of his superannuation. It is however clarified that if such amount has not been paid to the petitioner, the respondent commission is directed to pay all retiral benefits to the petitioner forthwith.

12. Since no action was taken by the respondent because of the letter of the retirement issued by the petitioner and thereafter because of the status quo order passed by this Court, it is open for the respondent commission to take necessary action in accordance with law. However, such anticipated action should not come in the way of the petitioner from taking any retiral benefits as indicated above.

13. Subject to the aforesaid directions, the present petition is accordingly disposed of. Rule

is made absolute to the aforesaid extent with no order as to costs.

14. Office to send the writ to the petitioner forthwith.

(K.A.PUJ, J.)

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